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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Darren W. Hodgdon

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MAYER BROWN LLP

P.O. BOX 2828

CHICAGO, IL 60690

EXAMINER

SQUIRES, ELIZA A

ART UNIT

PAPER NUMBER

4156

NOTIFICATION DATE

DELIVERY MODE

09/25/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/821,084	HODGDON, DARREN W.	
	Examiner	Art Unit	
	Eliza Squires	4156	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/18/2006, 4/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This communication is in response to the application filed on 8 April 2004. Claims 1-52 are pending.

Claim Objections

1. **Claim 46** is objected to because of the following informalities: the claim recites "...contain data that identifying an individual..." the term "identifying" should be modified to "identifies" or the similar. Appropriate correction is required.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-51 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-50 and 55 of copending Application No. 11/055496. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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4. Claim 52 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 54 of copending Application No. 11/055496.

Although the conflicting claims are not identical, they are not patentably distinct from each other since it would have been obvious to one of ordinary skill in the art at the time of the invention to include the computer program product within a computer system which comprises a processor and storage.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. **Claims 1-50** are rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. The claims refer to a series of abstract steps, which is non-

statutory under 35 U.S.C. 101. In order for a method to be considered a “process” under 35

U.S.C. 101, a claimed process must either: (1) be tied to another statutory class (such as a

particular apparatus) or (2) transform underlying subject matter (such as an article or materials).

Diamond v. Diehr, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978);

Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the

claim, the method is not a patent eligible process under 35 U.S.C. 101 and is nonstatutory subject

matter. The claims recite no substantive tie to another statutory class in the body of the claims

and are therefore rejected.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 42 and 43** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. **As to claim 42 and 43**, claim element “means for communicating” is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)). If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly inks or

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associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP 2181 and 608.01(0).

9. **Claims 2, 16-21, 18-24, 27, 29-30, 35, 39, 42, 43 and 50** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. **As to claim 2**, the term, used twice in the claim, "about" in line 2 of the claim is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The wording of the claim renders the claim ambiguous. For the purposes of examination, examiner will read this claim to mean that the incentive comprises a discount that falls within a range between .1% and 9%.

b. **As to claim 16-21**, the term "about" in line 3 of the claim is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

c. **As to claim 27**, the term "about" in line 1 of the claim is a relative term which renders the claim indefinite. The term "about" is not defined by the claim, the

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specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

d. **As to claim 18-24, 29-30, 35, 39, and 50** are directed towards components of dependant claims wherein the components are recited in the alternative; they are unclear as they fail to further limit the independent claim.

e. **As to claims 42 and 43**, the claims recite structure that appears to be directed towards apparatus components while the claims from which they depend are method claims. Also, the action of accessing the health care program over the internet seems to suggest that claims 1-50 are directed towards computer software rather than method claims, however, these claims for the purposes of examination will be read as method claims. While the means are undefined, they will be assumed to be for claim 42 a step for communicating with the health care program via the internet and for claim 43 wherein the step of communicating is between one or more participants and the healthcare program.

f. **As to claim 43**, the claim recites the limitation "wherein a means for communicating", however, there is no means for communicating in claim 1 from which this claim depends and appears to be seeking to further limit.

10. **Claims 1 and 9** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. **Claim 1** recites the limitation "the biometric measurement analysis" in line 9. There is insufficient antecedent basis for this limitation in the claim.

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- b. **Claim 9** recites the limitation "the future" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. **Claims 1, 5-6, 8, 10-11, 14-15, 22-24, 28-31, 39-41, 44-50** are rejected under 35

U.S.C. 102(b) as being anticipated by “Wisconsin Businesses, Insurers Take New Look at Wellness Programs” by *Wallenfang*.

13. **As to claim 1**, *Wallenfang* discloses A method of administering an incentive based health care program, the method comprises:

offering one or more incentives to one or more participants of the health care program (page 2 wherein an incentive is a discount on premium or "a trip to Las Vegas"), the one or more incentives provided to the one or more participants to perform at least one of completing a health risk assessment questionnaire addressing one or more health risks (page 2), completing a biometric measurement analysis addressing one or more biometric parameters (page 2 wherein a biometric measurement is a blood pressure, height or weight), or providing a biosample for biomedical analysis (page 2 wherein a biosample is used to check cholesterol and blood sugar); wherein, if the one or more participants completes the health risk assessment questionnaire, completes the biometric measurement analysis, or provides the biosample, the incentive is awarded to the one or more participants (page 2 wherein a patient who participates is provided a premium discount); and if the biosample is provided the biosample is analyzed for one or more biomedical parameters (page 2 wherein a biosample is checked for cholesterol or blood sugar);

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scoring, ranking, or grading at least one of the one or more health risks, the biometric measurement analysis, or the one or more biometric parameters to calculate a Health Score (page 2 wherein a wellness score is assigned); and

notifying the one or more participants of the Health Score (page 3 wherein "individual reports are mailed to employees' homes").

14. **As to claim 5**, see the discussion of claim 1, additionally, *Wallenfang* discloses the method further comprising calculating incentive information in accordance with an incentive program (page 2).

15. **As to claim 6**, see the discussion of claim 1 and 5, additionally, *Wallenfang* discloses the method wherein the incentive program bases the incentive information on the Health Score of the participant (page 2).

16. **As to claim 8**, see the discussion of claims 1 and 5, additionally, *Wallenfang* discloses the method wherein the incentive program provides for an incentive for at least one of achieving a predetermined Health Score (page 2).

17. **As to claim 10**, see the discussion of claim 1, additionally, *Wallenfang* discloses the method wherein the incentive comprises a travel award or a contribution discount (page 2).

18. **With respect to claim 11**, see the discussion of claim 1, additionally, *Wallenfang* discloses the method wherein the incentive comprises a financial reward (page 2).

19. **As to claim 14**, see the discussion of claim 1, additionally, *Wallenfang* discloses the method wherein the one of the one or more health risks, the biometric parameters, or the biomedical parameters are scored based on an impact on excess health care claims (page 3).

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20. **As to claim 15**, see the discussion of claim 1 and 14, additionally, *Wallenfang* discloses The method of claim 14, wherein the one of the one or more health risks, the one or more biometric parameters, or the one or more biomedical parameters comprises at least one of tobacco use, blood pressure, body weight, cholesterol level, or glucose level (page 2).

21. **As to claim 22**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the one or more biomedical parameter assess vital organ function to meet the claim limitations because the existence of a biometric parameter is not necessarily required.

22. **With respect to claim 23**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate the biomedical parameter comprises serum concentration of at least one of glucose, blood urea nitrogen, creatinine, uric acid, bilirubin, serum glutamic-oxaloacetic transaminase enzyme, serum glutamate pyruvate transaminase enzyme, alkaline phosphatase, lactic acid dehydrogenase, total protein, albumin, globulin, iron, calcium, phosphorous, sodium, potassium,

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chloride, high density lipoprotein, triglycerides, total cholesterol, very low density lipoprotein, or low density lipoprotein to meet the claim limitations because the existence of a biometric parameter is not necessarily required.

23. **With respect to claim 24**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the biomedical parameter comprises albumin/globulin ratio, total cholesterol/high density lipoprotein ratio, or low density lipoprotein/high density lipoprotein ratio to meet the claim limitations because the existence of a biomedical parameter is not necessarily required.

24. **As to claim 28**, see the discussion of claim 1, additionally, *Wallenfang* discloses the method further comprising offering to the one or more participants after completing the health risk assessment questionnaire or the biometric measurement analysis, or providing the biosample, information preventive care (page 3).

25. **With respect to claim 29**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate

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that at least one of the one or more biometric or biomedical parameters are reported to meet the claim limitations because the existence of a biomedical or biometric parameter is not necessarily required.

26. **With respect to claim 30**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that at least one of the one or more biometric or biomedical parameters are reported to meet the claim limitations because the existence of a biomedical or biometric parameter is not necessarily required.

27. **As to claim 31**, see the discussion of claim 1, additionally, *Wallenfang* discloses that the method wherein the at least one of the one or more health risks, the one or more biometric parameters, or the one or more biomedical parameters are reported to the one or more participants in one or more forms comprising numerically, graphically, verbally, telephonically, electronically, or textually (page 3).

28. **With respect to claim 39**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall

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within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the health risk assessment questionnaire assesses at least one of tobacco use, blood pressure, body weight, body fat, or body-mass-index of the one or more participants to meet the claim limitations because the existence of a health risk questionnaire is not necessarily required.

29. **As to claim 40**, see the discussion of claim 1. This claim refers to an intended purpose or use for a method step recited in claim 1. This purpose for which the method step of claim 1 is used, in itself is not a method step and is not an action that can be performed. This claim, therefore, is indistinguishable from that which was claimed in claim 1.

30. **As to claim 41**, see the discussion of claim 1. This claim refers to an intended purpose or use for a method step recited in claim 1. This purpose for which the method step of claim 1 is used, in itself is not a method step and is not an action that can be performed. This claim, therefore, is indistinguishable from that which was claimed in claim 1.

31. **With respect to claim 44**, see the discussion of claim 1, additionally *Wallenfang* discloses the method wherein the participant consents to allowing a subcontractor, to use information collected in conjunction with the health care program to generate at least a group report (page 2 and 3 wherein consent is given by the program being voluntary and the participant agreeing to be assessed with the knowledge of the components of the program).

32. **As to claim 45**, see the discussion of claim 1 and 44, additionally *Wallenfang* discloses the method wherein the at least one reports or comparisons comprise aggregate information (page 3).

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33. **As to claim 46**, see the discussion of claim 1, 44, and 45, additionally, *Wallenfang* discloses the method wherein the aggregate information does not contain data that identifies an individual participant (page 3).

34. **As to claim 47**, see the discussion of claim 1, additionally, *Wallenfang* discloses The method of claim 1, wherein the information collected from the one or more participants in conjunction with the health care program is communicated to at least one of a coach or a health care practitioner to at least one of assist in instructing the participant in regard to the information (page 2 and 3).

35. **As to claim 48**, see the discussion of claim 1 and 47, additionally, *Wallenfang* discloses the method wherein the information communicated to the at least one coach or health care practitioner is done with consent of the participant (page 2 and 3 wherein consent is given by the program being voluntary and the participant agreeing to be assessed with the knowledge of the components of the program).

36. **As to claim 49**, see the discussion of claim 1 and 47, additionally, *Wallenfang* discloses the method wherein the health care practitioner comprises a nurse (page 2 and 3).

37. **With respect to claim 50**, see the discussion of claim 1, examiner notes that completing a health risk assessment questionnaire addressing one or more health risks, completing a biometric measurement analysis addressing one or more biometric parameters, and providing a biosample for biomedical analysis are recited in the alternative in claim 1 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the biosample comprises a blood, tissue, organ, saliva, hair, skin, fingernail, toenail, urine, or

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stool sample to meet the claim limitations because the existence of a biosample is not necessarily required.

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Claim Rejections - 35 USC § 103

38. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

39. **Claims 2-4, 7, 12-13, 32-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wallenfang* in view of "Business and Health; the 'Wellness' Discount Plans" by *Kramon*.

40. **As to claim 2**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach that the contribution discount is given in the form of a percentage. In the same field of endeavor, *Kramon* discloses the method wherein the incentive comprises a contribution discount of about 0.1% to about 99% (Page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wallenfang* with *Kramon* since discounts using percentages are well known in the art as demonstrated by the *Kramon* reference as they allow a program to become scalable to the various contribution rates of various individuals and organizations.

41. **As to claim 3**, see the discussion of claims 1 and 2, additionally, *Kramon* discloses the method wherein the contribution discount is about 20% or less.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Wallenfang* with *Kramon* since discounts using percentages are well known in the art as demonstrated by the *Kramon* reference as they allow a program to become scalable to the various contribution rates of various individuals and organizations.

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42. **As to claim 4**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach comparing medical indices to a biomedical parameter. In the same field of endeavor, *Kramon* discloses the method wherein the incentive is based on a comparison to a medical index of normal range for the one or more biometric parameters (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing and incentive program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a health score based on risks due to the deviation from normal values.

43. **As to claim 7**, while *Wallenfang* discloses the method of claim 1 and 5 substantially as claimed, the reference does not explicitly teach comparing medical indices to a biomedical parameter. In the same field of endeavor, *Kramon* discloses the method wherein the incentive program bases the incentive information on a comparison to a medical index of normal range with the one or more biometric parameters (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing and incentive program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a health score based on risks due to the deviation from normal values.

44. **With respect to claim 12**, see the discussion of claim 1, additionally *Wallenfang* discloses the method wherein a health score is based upon health risks, biometric parameters, and one or more biomedical parameters (page 2). However *Wallenfang* does not explicitly disclose comparing medical indices to a biomedical parameter. *Kramon* discloses the method wherein the

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incentive is based on a comparison to a medical index of normal range for one or more biomedical parameters (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing and incentive program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a health score based on risks due to the deviation from normal values.

45. **With respect to claim 13**, see the discussion of claim 1, additionally *Wallenfang* discloses the method wherein a health score is based upon health risks, biometric parameters, and one or more biomedical parameters (page 2). However *Wallenfang* does not explicitly disclose comparing medical indices to a biomedical parameter. *Kramon* discloses the method wherein at least one of the one or more health risks, the one or more biometric parameters, or the one or more biomedical parameters are evaluated in comparison to a medical index of normal range to determine the Health Score (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing and incentive program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a health score based on risks due to the deviation from normal values.

46. **As to claim 32**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach comparing medical indices to a biomedical parameter. In the same field of endeavor, *Kramon* discloses the method wherein the incentive is based on a comparison to a medical index of normal range for the one or more biometric parameters (page 2).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing and incentive program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a index based on risks due to the deviation from normal values.

47. **As to claim 33**, see the discussion of claim 1, additionally, *Wallenfang* discloses alerting individuals to health risks associated with one or more health risks, the one or more biometric parameters, or the one or more biomedical parameters (page 2 and 3). However, *Wallenfang* does not disclose comparing these to a medical index. *Kramon* discloses the method wherein the medical risks are compared to a medical index of normal range for the one or more health risks, the one or more biometric parameters, or the one or more biomedical parameters (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing, incentive, and reporting program of *Wallenfang* with the comparison to medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a recommendation based on risks due to the deviation from normal values.

48. **As to claim 34**, see the discussion of claims 1 and 33, additionally *Wallenfang* discloses the method wherein the one or more participants are informed: that it is advisable to counsel one or more physicians regarding the health risk (page 2 and 3). However *Wallenfang* does not disclose that the parameter is compared to a normal value. *Kramon* makes this disclosure (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the testing, incentive, and reporting program of *Wallenfang* with the comparison to

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medical indices of *Kramon* since the use of this comparison would improve the ability of the program to generate a recommendation based on risks due to the deviation from normal values.

49. **As to claim 35**, see the discussion of claim 1, 33, and 34, examiner notes that informing participants of the various options recited in the claim are recited in the alternative in claim 34 from which this claim is dependant. Claim 1 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the pharmacological agent comprises a prescription drug, an over-the-counter drug, a homeopathic agent, an herbal agent, a mineral, or a vitamin to meet the claim limitations because the existence of a pharmacological agent is not necessarily required.

50. **As to claim 36**, see the discussion of claims 1 and 33, additionally, *Wallenfang* discloses the method further comprising offering to the one or more alerted participants to treat the health risk, the biometric parameter, or the biomedical parameter, a lifestyle regimen (behavior cessation program, page 3).

51. **With respect to claim 37**, see the discussion of claims 1 and 33, additionally, *Wallenfang* discloses the method wherein the health risk, the biometric parameter, or the biomedical parameter are explained to the one or more participants in relation to at least one of the participant's health or relevance to a health-risk behavior (page 2 and 3).

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52. **Claims 9, 25-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wallenfang* in view of “Multidimensional Evaluation of Monetary Incentive Strategies for Weight Control” from the *Psychological Record*.

53. **As to claim 9**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach an incentive is given for a participant to participate in the future. *Psychological Record* discloses the method wherein an additional incentive is provided to the participant after achieving one or more incentives to partake in the incentive based health care program at another time in the future (page 3 see the discussion of Group 2 also see page 7).

Since maintenance or improvement over time is an important aspect of any program to influence lifestyle changes or their maintenance, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the health care program of *Wallenfang* with the incentives for continued participation of the *Psychological Record* since the combination would encourage maintenance activities (*Psychological Record* Page 7).

54. **With respect to claim 25**, see the discussion of claim 1, additionally *Wallenfang* discloses the method wherein a health score is based upon health risks, biometric parameters, and one or more biomedical parameters (page 2). However *Wallenfang* does not explicitly disclose improvement, maintenance, or achievement over a period of time. *Psychological Record* discloses providing one or more additional incentives to the one or more participants to achieve, maintain or improve their parameters over a period of time (page 3 see the discussion of Group 2 also see page 7).

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Since maintenance or improvement over time is an important aspect of any program to influence lifestyle changes or their maintenance, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the health care program of *Wallenfang* with the incentives for continued participation of the *Psychological Record* since the combination would encourage maintenance activities (*Psychological Record* Page 7).

55. **As to claim 26**, see the discussion of claims 1 and 25, additionally, *Psychological Record* further discloses the period of time comprises about thirty minutes to about 5 years (page 3 see the discussion of Group 2 also see page 7).

56. **As to claim 27**, see the discussion of claims 1 and 25, additionally *Psychological Record* further discloses the method wherein the period of time comprises about six days (page 3 see the discussion of Group 2).

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57. **Claims 16-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wallenfang* in view of “Smart Heart Challenge” by *Quaker*.

58. **With respect to claim 16**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach that the physical parameters are modifiable within a period of 12 months or less. Examiner asserts however that the fact that a human body changes as a result of medication, exercise, behavioral or dietary changes is old and well known in the art. For example, in the same field of endeavor, *Quaker* discloses the method wherein the one of the one or more health risks or the one or more biomedical parameters are modifiable by the one or more participants within a period of about twelve months or less by implementation of a dietary change (page 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the incentive program of *Wallenfang* with the use of a lifestyle or biologic change in an individual of *Quaker* since the combination will increase the effectiveness of an incentive program.

59. **As to claim 17**, see the discussion of claim 1 and 16, additionally *Quaker* discloses the method wherein the one or more biomedical parameters comprises a cholesterol level (page 1).

60. **As to claim 18**, see the discussion of claims 1 and 16, examiner notes that administration of a pharmacological agent, gene therapy, implementation of a behavioral change, implementation of an exercise regime, or implementation of a dietary change are recited in the alternative in claim 16 from which this claim is dependant. Claim 16 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the pharmacological agent comprises a prescription

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to meet the claim limitations because the existence of a pharmacological agent is not necessarily required.

61. **As to claim 19**, see the discussion of claims 1 and 16, examiner notes that administration of a pharmacological agent, gene therapy, implementation of a behavioral change, implementation of an exercise regime, or implementation of a dietary change are recited in the alternative in claim 16 from which this claim is dependant. Claim 16 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that the behavioral change comprises an exercise program to meet the claim limitations because the existence of a behavioral change is not necessarily required.

62. **As to claim 20**, see the discussion of claims 1 and 16, examiner notes that administration of a pharmacological agent, gene therapy, implementation of a behavioral change, implementation of an exercise regime, or implementation of a dietary change are recited in the alternative in claim 16 from which this claim is dependant. Claim 16 merely requires that one of the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that dietary change comprises a consuming food that is lower in at least one of salt, calories, carbohydrates, protein, fat, cholesterol, or triglycerides to meet the claim limitations because the existence of a dietary change is not necessarily required.

63. **As to claim 21**, see the discussion of claims 1 and 16, examiner notes that administration of a pharmacological agent, gene therapy, implementation of a behavioral change, implementation of an exercise regime, or implementation of a dietary change are recited in the alternative in claim 16 from which this claim is dependant. Claim 16 merely requires that one of

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the listed components must be met to fall within the scope of the claims, not all. As such, it is not then required for prior art to demonstrate that dietary change comprises a consuming food that that is higher in at least one of minerals, vitamins, dietary fiber, calories, carbohydrates, protein, fat, cholesterol, or triglycerides to meet the claim limitations because the existence of a dietary change is not necessarily required.

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64. **Claim 38** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Wallenfang* in view of *Quaker* in further view of *Psychological Record*.

65. **With respect to claim 38**, see the discussion of claim 1, additionally *Wallenfang* discloses a health score. However *Wallenfang* does not explicitly teach providing an incentive to consume foods that are higher or lower in certain nutritional elements. In the same field of endeavor *Psychological Record* discloses offering to the one or more participants to improve their physical parameter an incentive to improve the physical parameter (page 3 see the discussion of Group 2 also see page 7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the use of a health score of *Wallenfang* with the use of incentives of *Psychological Record* since the combination would improve the program by allowing the same program to be tailored to people with different health risks.

Examiner asserts that use of consuming foods higher or lower in salt, calories, carbohydrates, protein, fat, cholesterol, or triglycerides to modify a health related parameter is old and well known in the art. For example, *Quaker* teaches that persons should consume items that are lower or higher in at least one of fat, and cholesterol to reduce their health risks (page 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine *Wallenfang* and *Psychological Record* with the old and well known methods of lowering health risks of *Quaker* since the combination would encourage maintenance activities (*Psychological Record* Page 7).

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66. **Claims 42-43** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wallenfang* in view of U.S. Patent Application 2002/0072933 to *Vonk et al.*

67. **As to claim 42**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach accessing the program over the internet. *Vonk* discloses the method further comprising means for accessing the health care program over the Internet (paragraphs [0112] and claim 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the health care program of *Wallenfang* with the use of the internet of *Vonk* since the combination would provide significant improvements in automation (*Vonk* paragraph [0113]).

68. **With respect to claim 43**, while *Wallenfang* discloses the method of claim 1 substantially as claimed, the reference does not explicitly teach accessing the program over the internet. *Vonk* discloses the method wherein a means for communicating is implemented via a network configured to interface over the Internet between the one or more participants and the health care program (paragraphs [0112] and claim 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the health care program of *Wallenfang* with the use of the internet of *Vonk* since the combination would provide significant improvements in automation (*Vonk* paragraph [0113]).

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69. **Claims 51-52** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,454,705 to *Cosentino* in view of *Wallenfang*.

70. **As to claim 51**, *Cosentino* discloses a computer program product for use with a system for managing an incentive based health care program, comprising:

a computer usable medium having program code embodied in the medium for causing the computer program to interface over a communications medium between a sponsor of the health care program and one or more participants of the health care program, wherein the program code (claim 22): performs at least one of

recognizes analyzed or raw data from one or more biometric analyses (claims 8 and 9).

evaluates the one or more biometric parameters to calculate a Health Score to assess for presence or risk of disease (claims 8, 9, column 16, lines 34-48 and column 2, lines 20-46);

However, *Consetino* does not explicitly teach that a participant is notified of the health score. In the same field of endeavor, *Wallenfang* discloses the method further comprising notifying the one or more participants of the Health Score (page 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the computer implemented health scoring system of *Consentino* with the participant notification system of *Wallenfang* since the combination would improve the ability of the patient to manage their health conditions by providing them with relevant information.

71. **As to claim 52**, see the discussion of claim 50, additionally, *Cosentino* discloses that the program code accesses a database (claims 1 and 8). *Cosentino* does not explicitly disclose that an

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incentive is calculated. In the same field of endeavor, *Wallenfang* discloses that an incentive is calculated (page 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the use of the computer system to calculate a health score of *Cosentino* with the method of using an incentive based on a health score of *Wallenfang* since the combination would have the improved function of automatically calculating an incentive for multiple people so that the calculations can be completed quicker and with reduced error.

Conclusion

72. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. "Life Jump Start: Darren Hodgdon Has Created a Wellness Formula That's Won Rave Reviews in Chicago, But Will it Play in Peoria?" by Craig Walters discusses an online corporate wellness service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliza Squires whose telephone number is (571)270-7052. The examiner can normally be reached on Monday through Friday 8 am - 4 pm Eastern Standard Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Kyle can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/E. S./

Examiner, Art Unit 4156

9/15/2008

/Charles R. Kyle/

Supervisory Patent Examiner, Art Unit 4156